

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,
IDAHO CONSERVATION LEAGUE,
SIERRA CLUB, and MI FAMILIA VOTA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and,

AMERICAN FOREST & PAPER
ASSOCIATION, AMERICAN
PETROLEUM INSTITUTE, and
NATIONAL MINING ASSOCIATION,
NATIONAL STONE, SAND, & GRAVEL
ASSOCIATION,

Intervenor-
Defendants.

No. 2:20-CV-0950-JCC

JOINT STATUS REPORT AND
STIPULATED MOTION TO FURTHER
STAY PROCEEDING

NOTE ON MOTION CALENDAR:
APRIL 30, 2021

1 In accordance with this Court’s Order, Dkt. No. 47 (Feb. 8, 2021), Plaintiffs, Defendants
 2 (“the Agencies”),¹ and Intervenor-Defendants² hereby submit this status report. Furthermore,
 3 pursuant to Local Rules 7(d)(1) and 10(g), the Parties hereby move to further stay the above-
 4 captioned proceeding until July 1, 2021. The Parties have good cause for this request.

5 1. In this proceeding, Plaintiffs are challenging two rules promulgated by the
 6 Agencies that define the phrase “waters of the United States” in Section 1362(7) of the Clean
 7 Water Act: the Navigable Waters Protection Rule: Definition of “Waters of the United States,”
 8 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“NWPR”), and the Definition of “Waters of the United
 9 States”—Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“Repeal
 10 Rule”).

11 2. As stated in the Parties’ February 5, 2021 Stipulated Motion to Stay Proceeding,
 12 Dkt. No. 46, the Agencies are reviewing the NWPR, which replaced the Repeal Rule.
 13 Accordingly, the Court granted the Parties’ motion to stay the proceeding until May 1, 2021. Dkt.
 14 No. 47. The Court further ordered the Parties to submit a joint status report on or before May 1,
 15 2021 “to update the Court on the status of the case.” *Id.*

16 3. On March 10, 2021, the new EPA Administrator, Michael Regan, was sworn in.
 17 167 Cong. Rec. S1456 (daily ed. Mar. 10, 2021). The new Administrator and his staff have since
 18 been briefed on the NWPR, and the new administration is currently weighing its options regarding
 19 the Rule.

20 4. Recently, Administrator Regan pledged to “begin a stakeholder engagement
 21 process involving our AG community, Farm Bureau or AG CEOs, our environmental community,
 22

23
 24 ¹ EPA Administrator Michael Regan and Acting Assistant Secretary of the Army for Civil Works
 25 Jaime Pinkham are automatically substituted for their predecessors in office pursuant to Rule
 26 25(d) of the Federal Rules of Civil Procedure.

27 ² Proposed intervenor-plaintiff Patagonia Works has filed a motion to intervene in this
 proceeding. *See* Dkt. No. 21. This motion remains pending.

1 to look at the lessons learned and how we can move forward.” *Hearing on Fiscal 2022 Budget*
 2 *Requests for EPA Before the H. Appropriations Subcomm. on Interior & Env’t*, 117th Cong. 4
 3 (Apr. 21, 2021) (statement of Michael Regan, EPA Administrator). While the Agencies have not
 4 yet made a final decision with respect to the NWPR, Administrator Regan has expressed his intent
 5 to “chart a path forward on waters of the U.S. that will be inclusive and forward-looking.” *Id.* at
 6 5.

7 5. Given that the review of the NWPR is active and ongoing, the Parties all agree that
 8 the proceeding should be further stayed until July 1, 2021.

9 6. Other courts considering challenges to the rules at issue in this case have granted
 10 stays or extensions of proceedings to accommodate the Agencies’ review. *See, e.g., State of*
 11 *Colorado v. EPA*, No. 20-cv-01461, Dkt. No. 101 (D. Colo. Apr. 21, 2021) (granting second 45-
 12 day extension of briefing schedule); *State of California v. Regan*, No. 3:20-cv-3005, Dkt. No. 241
 13 (granting opposed motion to stay proceedings for an additional 60 days after initial 60-day stay)
 14 (N.D. Cal. Apr. 16, 2021); *Waterkeeper All. v. Wheeler*, No. 3:18-cv-03521, Dkt. No. 105 (N.D.
 15 Cal. Apr. 14, 2021) (granting the Agencies’ request for a 60-day extension after initial 60-day
 16 stay); *Navajo Nation v. Wheeler*, No. 2:20-cv-602, Dkt. No. 27 (D.N.M. Feb. 4, 2021) (extending
 17 all deadlines by 30 days); *Murray v. Wheeler*, No. 1:19-cv-1498, Dkt. No. 42 (N.D.N.Y. Feb. 2,
 18 2021) (holding case in abeyance until August 2, 2021); *New Mexico Cattle Grower’s Ass’n v.*
 19 *EPA*, No. 19-cv-0988 RB/SCY, Dkt. No. 64 (D.N.M. Apr. 29, 2021) (granting opposed request to
 20 continue existing stay in the case until June 1, 2021); *Env’tl. Integrity Project v. Wheeler*, No.
 21 1:20-cv-01734, Dkt. No. 27 (D.D.C. Jan. 28, 2021) (staying case indefinitely).³

22 7. This joint motion is without prejudice to the right of any party to seek a further
 23 stay at the end of the abeyance period. The Parties retain the right to move this Court to lift the
 24

25 ³ Only one court has denied such a request. *See Pascua Yaqui Tribe v. EPA*, No. 4:20-cv-00266,
 26 Dkt. No. 32 (D. Ariz. Apr. 12, 2021). In that case, the Agencies had requested a 90-day stay,
 27 which was opposed by the plaintiffs.

1 stay prior to the end of the abeyance period if circumstances warrant resuming litigation. Granting
2 this motion will not prejudice any party, will conserve the Parties' resources, and will promote
3 the interest of judicial economy.

4 For the foregoing reasons, the Parties respectfully request that the Court stay this
5 proceeding until July 1, 2021.

6 Dated: April 29, 2021

Respectfully submitted,

7 /s/ Hubert T. Lee

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COUNSEL FOR INTERVENOR-
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**Pro hac vice*

[Proposed] Order

It is ordered that the above-captioned proceeding be stayed until July 1, 2021.

IT IS SO ORDERED,

Hon. John C. Coughenour
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2021, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Hubert T. Lee

Hubert T. Lee